

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1189 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

NAVINCHANDRA BHAGWATRAY BHAVSAR

Versus

DINESHBHAI BABUBHAI PRAJAPATI

Appearance:

MR PR THAKKAR for Petitioner

MR PB MAJMUDAR for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/04/98

ORAL JUDGEMENT

Heard learned counsel for the parties.

By the impugned order dated 8.8.1997 passed below Exh. 19 the learned Third Extra Assistant Judge, Baroda, in Regular Civil Appeal No. 58 of 1985 has granted amendment in the plaint.

The plaintiff filed a suit for eviction of the

defendant-petitioner from the suit premises on the ground of reasonable and bona fide necessity. The suit was dismissed by the trial court. The respondent-plaintiffs preferred an appeal which has been registered as Regular Civil Appeal No. 58 of 1985. During the pendency of the appeal an application Exh. 19 was filed by the plaintiffs on 13.12.1991 seeking amendment of plaint to incorporate alleged new ground of damages to the property during the pendency of the appeal. The learned judge relying on a decision of this Court in the case of CHAMPABEN VS. GOPINATH reported in 21 G.L.R. 709 granted amendment on the ground that any number of grounds can be added if they are based on subsequent event/occurred after the filing of the suit.

It is contended by Mr. P.R. Thakkar, learned counsel for the petitioner that the grounds canvassed is absolutely false and concocted. It is also stated that in fact such an incident had never happened during the pendency of the appeal after 1985 as alleged but the shutters were installed by encroaching upon the land of Baroda Municipal Corporation in the year 1967 below the projected balcony of the respondents. He also produced the compromise pursis in Civil Suit No. 1649 of 1968. He also produced a notice issued by the Baroda Municipal Corporation whereby his brother was called upon to state the date of installation of the shutter. Thus, the contention of the petitioner is that the alleged subsequent event of installation of shutters is false and fabricated and as such amendment cannot be permitted. I cannot agree with the submission of the learned counsel. So far as the correctness of the allegation is concerned, it is not the stage for the court to examine the correctness of the allegation in depth and detail. In view of this, I do not find any error much less error of jurisdiction which calls for interference by this court in exercise of powers under Section 115 C.P.C. Rule is discharged. Interim relief vacated.

The learned counsel says that operation of this order may be stayed for a period of six weeks to enable him to approach the Supreme Court. The appeal in the trial court is pending since 1985. The application for amendment was filed as back as in the year 1990. The appellate court has already framed the issue and has remitted the matter to the trial court. In view of this, the prayer is declined.

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